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NEWS RELEASE

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Supreme Court Seeks Comments on Proposals to Amend Hawai'i Rules of Appellate Procedure

The Supreme Court of Hawai'i seeks comment about proposals, submitted by the Committee on the Hawai'i Rules of Appellate Procedure, to amend the Hawai'i Rules of Appellate Procedure (HRAP). Rationale for the proposed changes is explained below.

The proposed amendment to Rule 3(e) requires an appellant to provide a file-marked copy of the notice of appeal to the trial court judge, if that judge is required to enter findings and conclusions after a notice of appeal is filed. Judges often do not know that an appeal has been filed and they do not enter the findings and conclusions required by the rules. The failure to make the findings and conclusions then requires a motion for remand and additional work that would not be necessary if the findings and conclusions were timely entered. The proposed amendment to section (f) requires the clerk of the court appealed from to notify the appellate clerk when fees are not paid. This provision, in conjunction with a provision of Rule 10(b), allows the appellate court to dismiss appeals earlier and saves the trial court or agency clerks the significant amount of time it takes to prepare records for appeals that are ultimately dismissed for failure to pay the filing fee or to get the fee waived.

The proposed amendment to Rule 4 clarifies that a written judgment or order must be entered and time measured from entry of the written order.

The last sentence in Rule 9 is an unnecessary repetition of a statutory standard and proposed to be deleted.

The amendment to Rule 10(a)(4) allows the trial court clerk to include any transcript that is prepared for the record on appeal and ready to transmit when the record is transmitted to the supreme court. It eliminates the need for a motion to supplement the record. The addition of Rule 10(b)(1)(E) is a mere transfer from Rule 11(b). The transfer is made to have all of the information about requesting transcripts in the same place. Subsequent subsections of the rule are re-lettered. The amendment to Rule 10(f) requires an appellant to request findings and conclusions when entry of them is required after the notice of appeal is filed and to require the judge who is to enter the findings and conclusions to do so within 28 days after the request was filed.

The amendment to Rule 11 removes transcript preparation matters that are transferred to Rule 10. The proposal also clearly defines the clerk's duties with regard to making transcripts and findings and conclusions part of the record on appeal. The purpose of the proposal is to limit the need for motions to supplement the record. The proposal also instructs the clerk that the record on appeal need not be prepared if the filing fee is not paid or if an order allowing the appellant to proceed *in forma pauperis* is not entered. These provisions eliminate a lot of wasted work now being performed for appeals that are ultimately dismissed.

Rule 24 is amended by adding subsection titles for ease of reference.

The amendment to Rule 28 requires service of a copy of an opening brief on defense counsel if the brief alleges ineffective assistance of defense counsel.

The amendment to Rule 32 recognizes that non-proportional fonts may result in more characters per inch than are currently allowed by the rules, but that are still easily read. The proposed rule recognizes 3 commonly used fonts as complying with the rule per se.

Rule 53 (attorneys' fees) is merged into Rule 39 (costs) so parties will not need to consult separate rules.

A prior provision that said no mandate will be issued from the court when parties voluntarily dismiss an appeal is proposed to be re-inserted to Rule 42. The prior deletion of the provision was unintended.

Rule 53 is proposed to merge into Rule 39 and Rule 53 is deleted and no longer necessary.

The proposed amendments to the rules are posted in their entirety on the Judiciary website at www.courts.state.hi.us/ Comments about the proposed amendments should be submitted in writing **no later than Sept. 2, 2003** to the Judiciary Public Affairs Office, 417 South King Street, Honolulu, Hawai'i 96813; by facsimile to (808) 539-4801; or via the Judiciary website.

Read the [proposed amendments](#).

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